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In the Supreme Court of the United States

No. 1009

OCTOBER TERM, 1959.

ROBERT HIGHAM, HARRY KAUFMAN, ABRAHAM SCHWARTZ, and FRANK ZANGARA,

Petitioners,

vs.

WILLIAM J. GAW, JOSEPH SAMMARTINO and JOSEPH L. CARELLY,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals For the Sixth Circuit.

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To the United States Court of Appeals For the Sixth Circuit.

Petitioners respectfully pray that a writ of certiorari issue to the United States Court of Appeals for the Sixth Circuit to review the judgment and the decision of that Court in Case No. 13,786, entitled William J. Gaw, et al. vs. Robert Higham, et al., which Court in a judgment (p. 17, *infra*) and opinion dated May 21, 1959 reversed the judgment and the decree of the District Court for the Northern District of Ohio, Eastern Division.

OPINIONS BELOW.

The opinion of the Court of Appeals is as yet not reported, and is appended hereto at page 13.

The oral opinion of the District Court is set forth at pages [illegible]a, Inc., of the Appendix to the brief of appellants [illegible] Court of Appeals.

The District Court entered its findings of fact and conclusions of law as set forth on pages 64a to 68a of said Appendix. The Court's decree and the amendment thereto are set forth in pages 69a and 70a of said Appendix. Nine copies of said Appendix are filed herewith.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 21, 1959 (App. p. 17). The jurisdiction of this Court is invoked under the provisions of 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

1. Where the qualifications of members of local unions of a National labor organization to be eligible for office in such local unions are set forth in the constitution of said national union, and where the interpretation of the constitution is vested solely in the president of said national union, and the question arises in a local union as to whether certain members are eligible to office, and the president fails and abstains from ruling thereon, and a declaratory action is filed seeking a determination of said question, are members of said local union seeking election to office indispensable parties?

2. Where a Federal District Court, in an action brought against a national labor organization, issues a consent decree ordering the constitution adopted at a meeting of said national organization to be in effect provisionally, although no provisions are stated in said decree by which the constitution would fail to be in effect, and said decree further provides for the appointment of a three-member Board of Monitors whose powers are advisory only and re-

stricted to recommendations, and said Board of Monitors, one member dissenting, interprets the Constitution and issues an order of recommendation that certain members of a local union are eligible for office, disregarding entirely the provision of the constitution, vesting in the President alone the power of interpreting the constitution; is the order of recommendation of said Board of Monitors so binding, that another District Court is banned from determining the validity of said order of recommendation and determining whether a local union within the jurisdiction of said Court is bound by said order of recommendation?

3. Where, in a declaratory judgment action, members of a local union who have not paid one month's dues in advance aspire to office in said local union, is a provision in the constitution of the national union to the effect that such members are not eligible for office, valid, and bars such members from office?

STATUTES INVOLVED.

The federal statute involved in this review is 28 U. S. C. Sec. 1332 as amended by Public Law 85-554, July 25, 1958.

> "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000.00 exclusive of interest and costs, and is between:
>
> (A) Citizens of different States."
>
> * * * * *

STATEMENT.

Petitioners, officers of Teamsters Local 377 of Youngstown, Ohio brought an action against the President, James Hoffa, and the Secretary-Treasurer, John English, of the International Union, three members of the so-called Board of Monitors of the International Union and the three respondents herein, who were members of Local 377, and aspired to become officers thereof.

Personal service was obtained on James Hoffa and later John English entered his appearance. Service was obtained against the three respondents, but not against the members of the Board of Monitors.

The action is for a declaratory judgment to determine the eligibility of candidates for office in the Local Union and for an injunction against the holding of any election until the eligibility of candidates had been determined.

The action arose out of the following developments of the affairs of the Local Union:

In September, 1958 a meeting of the Local was held for the purpose of nominating candidates for election to the offices in the Local Union. The respondents were nominated for office, but the chairman of the meeting ruled that respondents were ineligible as candidates because they had not paid one month's dues in advance. The constitution provided that to be eligible for office, a member must be in good standing, and to be in good standing must pay his dues on or before the first business day of the month in advance. It was admitted that the respondents had not complied with this provision.

An appeal was taken to the so-called Board of Monitors by the respondents and they ruled, one member dissenting, that respondents were eligible candidates for office, on the ground that they had not received due notice of this

provision in the constitution. Yet the Monitors, on February 19, 1958 gave notice that the constitution was in full force and effect.

Under the constitution, the President of the International had sole authority to interpret the constitution and the powers granted the Board of Monitors were purely advisory. The petitioners appealed to the President to interpret the provision with respect to eligibility to office, but the President failed and refused to do so, although he was informally of the opinion that members who had not paid one month's dues in advance were ineligible for office. The only action he took was that he would leave the question to be decided by the officers of the Local Union, who of course, could not exercise the power granted solely to him. Nevertheless, they so ruled, but at a packed meeting of the Local Union, held on November 5, 1958, where a large number of non-members were present and voted, respondents were nominated for office and an election was ordered held November 15, 1958.

This action was taken despite the fact that a preliminary injunction had issued from the District Court, forbidding the holding of such an election until the petition filed by petitioners had been heard on its merits.

The case was advanced for hearing to the 13th day of November, 1958, and at that time on motion by the petitioners and objected to by respondents, the respondents were dismissed from the case and the Court, after a hearing, issued a decree declaring that any member who had not paid one month's dues in advance was ineligible for office and prohibited the holding of any election, pending the appeal of the cause by the respondents. Thereafter, an appeal was taken to the Court of Appeals of the Sixth Circuit, which did not go into the merits of the case, but

held that the respondents were indispensable parties to the action and being citizens of the same state as the petitioners, the District Court was without jurisdiction and remanded the case to that Court to be dismissed.

ARGUMENT.

Question No. 1.

If respondents, being citizens of the same state as the petitioners, are indispensable parties the action should be dismissed for lack of jurisdiction. On the other hand, if they are "necessary" parties, then under Rule 21 of the Rules of Civil Procedure, the District Court in its discretion, could proceed to adjudicate this controversy in the absence of respondents.

Petitioners take the position that respondents are necessary but not indispensable parties to this litigation. True, they have an interest in the outcome of this case, but no more so than any other member of the Local who might aspire to office. The real controversy exists between the officers of the Local and the President of the International who refused and abstained from performing his plain duty to interpret the Constitution and to advise and direct these officers as to the eligibility of members of the Local Union for office. Whatever his decision, it would unquestionably have been followed.

In a number of labor cases where the question of indispensable parties was involved, the internal affairs of the Local were the matter of controversy, and in such cases, the Courts have been unanimous in holding that these locals were indispensable parties.

See *Green vs. Brophy*, 110 Fed. 2nd 539 and *Gray et al. vs. Reuther et al.*, 99 Fed. Sup. 992.

Here, the internal affairs of the local union is not a matter of controversy; the sole dispute arises out of the interpretation of the Constitution of the International with respect to the eligibility of members to be officers and this interpretation would be applicable to every Local Union throughout the United States. How, then, can a few members of one local of the many in the United States be held to be indispensable parties when the only issue involved is the interpretation of the constitution?

Weaver et al. vs. Marcus et al. (C. C. A. 4, 1948), 165 Fed. 2nd 862. The second syllabus reads as follows:

> "The federal rule providing that parties may be dropped by order of court implies that court has right to exercise some discretion on motion to drop a party and ordinarily, the exercise of such discretion can be reversed on appeal only when there has been a clear abuse thereof. Federal Rules of Civil Procedure, Rule 21, 28 U. S. C. A., following section 723c."

In *Niles-Bement-Pond Co. vs. Union* (1920), 254 U. S. 77, 80; 41 S. Ct. 39, 41, the Court said:

> "There is no prescribed formula for determining in every case whether a person or corporation is an indispensable party or not."

Bordieu vs. Pacific Western Oil Co. (1936), 299 U. S. 65, 57 S. Ct. 51, the law is expressed by Justice Sutherland:

> "The rule is that if the merits of the cause may be determined without prejudice to the rights of necessary parties, absent and beyond the jurisdiction of the court, it will be done; and a court of equity will strain hard to reach that result. (Citing cases.)
>
> "We refer to the rule established by these authorities because it illustrates the diligence with which

courts of equity will seek a way to adjudicate the merits of a case in the absence of interested parties that cannot be brought in."

In *Zwack vs. Kraus Bros. & Co., Inc.* (1950), 93 F. Supp. 963, the defendant based its motion to dismiss on the ground that certain indispensable parties were not parties to the action.

The Court said (p. 965):

"Since these parties are not subject to the jurisdiction of the Court, unless they should voluntarily appear, * * * it is apparent that to grant defendant's motion would be to deny plaintiff any remedy, and this result a court will properly 'strain' to avoid. (Citing Bourdieu vs. Pacific Western Oil Co., *supra.*)

"Two practical factors seem to me to be at the root of the indispensable party rule. First is the desirability of avoiding a determination which will affect the interests of persons who are not before the court. See *Green vs. Brophy*, 110 F. 2nd 539, 541. Second is the desirability of protecting a defendant from a second liability on the same obligation should some court subsequently decide issues of fact in favor of the absent third party. *Russian Reinsurance Co. vs. Stoddard*, 240 N. Y. 149; 147 N. E. 703. However, the rule is one fashioned in equity and the courts have taken care lest its application should result in inequity. *Parker Rust Proof Co. vs. Western Union Telegraph Co.*, 105 Fed. 2nd 976."

The fifth syllabus of the case just above cited reads as follows:

"The doctrine that one whose interests will be affected by decree must be made party to suit is equitable doctrine, which equity court should not apply where special circumstances would make its application inequitable."

Barney vs. Baltimore City (1867), 6 Wall. 280, 73 U. S. 280, 18 L. Ed. 825.

> "An indispensable party is one whose interests in the subject matter of the suit and the relief sought are so bound up with that of the other parties that his legal presence as a party to the proceeding is an absolute necessity without which the court cannot proceed."

Because of the failure of the principal defendant to perform his duty as defined in the Constitution to interpret its provisions relating to the eligibility of members to become officers, petitioners ask the Court to make such an interpretation and to define the respective duties and obligations between the petitioners and the President of the International. The interests of the respondents are only incidental to the main issue in the case.

In *Borchard on Declaratory Judgments*, p. 107, it is stated:

> "The two principal criteria guiding the policy in favor of rendering declaratory judgments are (1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding."

The above is quoted with approval in *American Casualty Co. vs. Howard et al.* (1949), 173 Fed. 2nd 924, 928. See also *Booth et al. vs. Security Mutual Life Insurance Co., et al.* (1957), 155 Fed. Sup. 755.

It may be urged that no real controversy exists between the petitioners on one side and the President of the International on the other, since he had informally expressed the opinion that members of the Union who had not paid one month's dues in advance were ineligible for office. However, his refusal to interpret the constitution

to that effect gave birth to a state of affairs akin to anarchy in the Local Union. The fact that he did not perform his precribed duty gave rise to a real controversy.

In the case of *In re: Reisenberg*, 208 U. S. 90, 28 S. Ct. 219, a suit was brought by foreign corporations against a New York Corporation which satisfied the jurisdictional requirement of diversity of citizenship. The complaint averred an unsatisfied indebtedness due each complainant from the defendant. However, although the defendant admitted the indebtedness and the other allegations of the complaint and joined with the complainants in a request that receivers be appointed, nevertheless, the Court held that the case substantially involved a controversy.

Question No. 2.

Prior to the filing of this action, no decision had been made by the United States District Court for the District of Columbia, with respect to the eligibility of union members who had not paid one month's dues in advance; in fact, the question on its merits had never been presented to that Court.

There was no question before the District Court in Cleveland, Ohio, as to the extent of the power and authority of the Board of Monitors.

These powers were defined in the consent decree. What confronted the Court in the instant case was a state of anarchy and confusion bordering on warfare in Local No. 377 arising out of the conflict between the order of recommendation of the Monitors and the plain provisions of the Constitution. To say that the Court hearing this case, was so bound by the order of the Monitors, that he had no option but to permit this state of anarchy to continue, is tantamount to saying that the Court was impotent to correct the situation and set it at rest.

Consider the situation confronting the officers of Local No. 377. There was no way they could bring the Monitors within the jurisdiction of any court they might choose. One Monitor was a resident of New York City, another of Washington, D. C., another of Dallas, Texas. No state court would have jurisdiction of any of the real defendants unless they voluntarily entered their appearance. The officers' real quarrel was with the President of the national union, on account of his refusal to perform his duty and to tell them whether members who had not paid one month's dues in advance were eligible for office.

Question No. 3.

There is nothing complex or ambiguous about the provision in the Constitution concerning eligibility of members for office. It plainly states that members who have not paid one month's dues in advance are ineligible. The opinion of the Monitors to the effect that certain persons of this class are eligible for office is based on the ground that as to them the provision of the Constitution did not apply because they did not receive due notice thereof.

The answer to this opinion is so rightly reasoned and so conclusive in the dissenting opinion of Monitor L. N. D. Wells, Jr., that to expatiate further would be only to "gild the lily."

His opinion is set forth in the Appendix of the appellees in the Court of Appeals (1 B to 4 B Incl.), and since nine copies of said Appendix are filed herewith, the opinion will not be reprinted here.

Harris vs. Minneapolis Local #544 (Dec. 5, 1958) 43 L. R. R. M. 2296.

This is a case decided by the Minneapolis District Court and the only case we have been able to find on the merits of this question. The syllabus reads as follows:

"*Eligibility for office—Requirement of union constitution.* Member of Teamsters Union was ineligible to be candidate for office of trustee of local union, since constitution of international union requires candidates for local union office to be members in good standing for two years, and this member had never met constitutional requirement that members on check-off make payment of one month's dues in advance to insure good standing."

CONCLUSION.

Since the District Court had jurisdiction of this cause and its decision on the merits has not been questioned, its judgment and decree should be reinstated.

Therefore, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Filed May 21, 1959.)

Before: McALLISTER and MILLER, Circuit Judges, and CHOATE, District Judge.

PER CURIAM:

In October, 1958, an election of officers and trustees of Local 377 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America was about to be held in Youngstown, Ohio. Appellants, William J. Gaw, Joseph Sammartino and Joseph L. Carelly, had been nominated for office, when appellees, Higham, Kaufman, Schwartz and Zangara, incumbent officers and trustees, filed a complaint alleging that Gaw, Sammartino and Carelly were not eligible for election to any office in the Local, and asking for a declaratory judgment determining their rights and legal relations in accordance with the pertinent provisions of the Constitution of the International. The complaint also named as defendants, James R. Hoffa, the president, John English, the secretary-treasurer, and John Rohrich, a trustee, of the International, as well as three Monitors of the International, theretofore appointed by the United States District Court for the District of Columbia. Appellees set forth in their complaint that the action involved the interpretation of the Constitution of the International with respect to the eligibility of members as officers; that an amendment of the Constitution of the International, adopted in 1957, required that all members, paying dues to local unions, must pay them on or before the first business day of the current month, in advance, and that where, as in the case of Local 377, membership dues were checked off by the employer

pursuant to properly executed check-off authorization, it should be the obligation of members to make one payment of one month's dues in advance, to insure their good standing; that to be eligible for election to any office of a local union, a member must be in continuous good standing for a period of two years, prior to nomination. Appellees further set forth in their complaint, asking for a declaratory judgment, that none of the three defendants—who are the appellants in this case—had paid their dues in advance as of the first day of the month, as required by the recently amended Constitution; that the above mentioned Monitors had held that reasonable notice was not given to appellants of the constitutional amendment providing for advance payment of dues, and that, in fact, they had no such notice; that the Monitors had also determined that it would be unconscionable to hold appellants ineligible for office on the ground that they had not paid such dues in advance and that the election, accordingly, should proceed with the names of appellants on the ballots as candidates for office in the Local. Appellants then asked that the declaratory judgment prayed for, fix and determine the rights, liabilities, duties, responsibilities and legal relations of the parties thereto as well as for an injunction enjoining and restraining the defendants named in the complaint, or any of them, from proceeding with the election of officers of Local 377. After the filing of an amended complaint, based on diversity of citizenship, in which the plaintiffs set forth that appellees Gaw, Sammartino and Carelly were proper, but not necessary parties defendant therein, appellants moved to dismiss the complaint for want of jurisdiction on the ground that the action was between citizens of the same state. Thereupon plaintiff appellees herein, Higham, Kaufman, Schwartz and Zangara, moved to dismiss the complaint as to com-

plainants Gaw, Sammartino and Carelly and also as to the trustee of the International, Rohrich. The District Court, against the objections of appellants, granted the motion, and appellants and Rohrich were formally dismissed as parties. That left Higham, Kaufman, Schwartz and Zangara as plaintiffs and Hoffa and English as defendants. There was no dispute between them. They all were opposed to appellants, and wanted to prevent them from being candidates for office, and from being elected to office. Thereafter, the District Court proceeded to the trial of the case, and filed findings of fact and conclusions of law in which it was held that, under the Constitution of the International, Gaw, Sammartino and Carelly were ineligible for office because they had not complied with the amendment of the Constitution of the International providing for payment of one month's dues in advance by all members, including those whose dues were paid directly by the employer to the Union in the so-called check-off system, and that, accordingly, they were not in good standing, and were ineligible for election to office. The District Court further held that it was the duty of James R. Hoffa, general president of the International, to enforce the provisions of the Constitution of the International, and, in pursuance thereof, to prevent the names of ineligible members from appearing on the ballot of the Local elections; and an injunctive decree was entered to the foregoing effect. From such decree, appeal was taken.

The only genuine controversy in this case was whether appellants were eligible candidates for offices in Local 377. In the original complaint, it was alleged that the action involved an actual controversy between appellees and appellants. Indispensability of parties is determined on practical considerations. *Shaughnessy v. Pedriero*, 349 U. S. 48. An indispensable party is one who not only has an in-

terest in the controversy but an interest of such a nature that a final decree can not be made without either affecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. Appellants were indispensable parties in the action filed by Higham, Kaufman, Schwartz and Zangara for the declaratory judgment. *Kentucky Natural Gas Corporation v. Duggins*, 165 F. 2d, 1011 (C. C. A. 6); *Schuckman v. Rubinstein*, 164 F. 2d 952 (C. C. A. 6). In a declaratory judgment action where indispensable parties defendant are citizens of the same state as plaintiffs, and their interests are adverse to plaintiffs, a federal court has no jurisdiction founded on diversity of citizenship, even though the remaining defendants are citizens of different states than plaintiffs. Diversity must exist between all plaintiffs on the one hand, and all defendants on the other. *Schuckman v. Rubenstein, supra.* Appellants, in their motion to dismiss for want of jurisdiction, set forth that the action commenced by plaintiffs was one between citizens of the same state; and it was, obviously, because of the existence of this fact that the plaintiffs in the District Court moved to dismiss them as parties defendant. While the District Court did not act upon the motion to dismiss the case for want of jurisdiction, and the record does not contain specific findings as to appellants' citizenship, there appears to be no question but that they are citizens of the same state as plaintiffs.

In consideration of the foregoing, the order of the District Court dismissing appellants as party-defendants is vacated and the case is remanded to the District Court for further proceedings. If the record disclose, on remand, that appellants are citizens of the same state as plaintiff-appellees, the action should be dismissed by the District Court for want of jurisdiction.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Filed May 21, 1959.)

Appeal from the United States District Court for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court in this cause be and the same is hereby vacated and the case remanded to the District Court for further proceedings consistent with the opinion herein.